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GAP INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOEL RUIZ, On Behalf of Himself and All Others
Similarly Situated,

Plaintiff,

v.

GAP, INC., and DOES 1-9 inclusive,

Defendants.

Case No. C 07-5739 SC

**DECLARATION OF WILLIAM
STERN IN REPLY TO GAP INC.'S
MOTION TO STRIKE PLAINTIFF'S
CLASS DEFINITION OR, IN THE
ALTERNATIVE, TO AMEND THE
CLASS DEFINITION**

Date: September 5, 2008
Time: 10:00 a.m.
Room: Courtroom 1, 17th Floor
Judge: Honorable Samuel Conti

Complaint filed: November 13, 2007

I, William L. Stern, hereby declare as follows:

1. I am a member of the State Bar of California and am admitted to practice before this Court. I am a partner in the law firm of Morrison & Foerster, LLP, attorneys for defendants in this action. These facts are known personally to me in that capacity. I submit this declaration in reply to GAP Inc.'s Motion to Strike Plaintiff's Class Definition or, in the Alternative, to Amend the Class Definition. If called as a witness, I would testify to the facts listed below.

2. In his opposition papers, plaintiff Joel Ruiz contends that GAP is seeking to deprive him of discovery. That is not true. GAP has produced documents responsive not only to

1 Ruiz's real claim, concerning persons who have suffered no actual identity theft to date, but also
2 into whether anyone else may have experienced identity theft as a result of the stolen laptop
3 incident. This discovery has been costly and time consuming because it has involved, among
4 other things, the collection and production of phone logs and e-mails and other documents
5 reflecting the inquiries of putative class members who phoned GAP or its third-party vendor
6 following receipt of the breach notification letter to ask about the incident. There is no discovery
7 that GAP has withheld on the basis that Ruiz is not himself a victim of actual identity theft.

8 3. Plaintiff also states that no depositions have been scheduled. GAP has offered to
9 produce its percipient witnesses and "persons most knowledgeable" for deposition in San
10 Francisco on September 10-12, 2008. In addition, the depositions of the vendor's witnesses are
11 being scheduled for Chicago (where plaintiffs' counsel is located) for several dates in September
12 2008. These depositions will proceed no matter how the Court rules on the pending motion.

13 4. Attached as Exhibit A to this Declaration is a true and correct copy of Plaintiff's
14 Responses and Objections to Defendant Gap, Inc.'s Second Set of Requests for Production of
15 Documents, received by me on July 30, 2008 in the regular course of business.

16 I declare under penalty of perjury that the foregoing is true and correct and this
17 Declaration was executed in San Francisco, California, on this 19th day of August, 2008.

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19 By: _____/s/ William Stern
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